THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 25896 of 1998

O r d e r:

Aggrieved by the award dated 31.03.2007 passed by the Labour Court, Guntur, in I.D. No. 532 of 1991, insofar as it directed imposing punishment of deferring of three annual increments with cumulative effect while setting aside the order of removal and directing his reinstatement, and the consequential proceedings dated 23.10.1997, issued by the respondents in implementation of the said award, the petitioner filed the present writ petition.

The petitioner while working with the respondents-APSEB was issued with charge sheet alleging certain misconduct. The petitioner submitted his explanation, but dis-satisfied with the same, the respondents ordered a departmental enquiry. Based on the enquiry report, the disciplinary authority removed the petitioner from service. Assailing the said removal order, the petitioner raised an industrial dispute in I.D. No. 532 of 1991, and the Labour Court vide award dated 31.01.1997, impugned in this writ petition, set aside the order of removal and directed reinstatement with continuity of service, without backwages, but imposed punishment of deferment of three annual increments with cumulative effect. In pursuance thereof, the respondents issued proceedings dated 23.10.1997, imposing the punishment as directed by the Labour Court.

The learned counsel for the petitioner submitted that the Chairman of the APSEB, who is the revisional authority, has himself passed the removal order, and thereby, the petitioner was denied the opportunity of preferring appeal/revision, but the Labour Court, failed to look into this aspect. He further submitted that in similar circumstances, a similar award passed by the Labour Court, was

assailed by one of the employees in W.P. No. 13761 of 1990 and the same by order dated 18.10.1995 was allowed by a learned Judge of this Court, which was even confirmed in writ appeal. Hence, he submits that he is entitled to the relief as was granted to the similarly placed employee in W.P. No. 13761 of 1990.

On the other hand, the learned Standing Counsel for the respondents-APSEB supported the impugned award and the consequential orders issued by the respondents. He submitted that though the Labour Court upheld the charges levelled against the petitioner, yet it had taken a lenient view and directed imposing of lesser punishment, and no interference is called for therewith.

Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondents-APSEB and perused the impugned award and the consequential orders issued by the respondents.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted
> (i) without jurisdiction - by assuming jurisdiction where there exists none, or
> (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or
> (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

This is not a case where the Labour Court has set aside the order of removal passed against the petitioner on account of the charges not having been proved or on some other technical reasons.

As can be seen from the award, the Labour Court upon appreciating the evidence on record, upheld the findings arrived at by the Enquiry Officer in the departmental enquiry, which held that the charges levelled against the petitioner are proved. Though the Labour Court, upheld the charges levelled against the petitioner, but considering the fact that there was no defalcation or misappropriation of funds of the respondents, there being no intentional negligence nor any loss caused to the respondents, and considering the long length of service put in by the petitioner, the Labour Court, felt that the punishment of removal imposed on the petitioner is disproportionate to the proved charges, and accordingly in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947, set aside the order of removal and directed reinstatement of the petitioner with continuity of service, without backwages, but directed imposition of punishment of deferment of three annual increments with cumulative effect, and no exception can be taken thereto.

I am unable to agree with the contention of the petitioner that he is entitled to the benefit of the order in W.P. No. 13761 of 1990, said to have been filed by a similarly situated person, for the reason that the Division Bench of this Court in W.A. No. 175 of 1996, filed against the order in the above said writ petition, by judgment dated 31.03.1997, gave liberty to the authorities to impose punishment as suggested by the enquiry authority. In the instant case also, as can be seen from the award, the enquiry officer suggested imposition of deferment of three annual increments, and though the disciplinary authority imposed punishment of removal from service, but the Labour Court, directed imposition of the punishment, which in fact, was suggested by the enquiry officer, and since the respondents issued proceedings 23.10.1997 imposing punishment, as directed by the Labour Court, no fault can be found therewith.

For the foregoing reasons, I find no merit in the writ petition and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: November, 2007.
KSR

---

[1] AIR 2003 SC 3044=2003AIR SCW3872